

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	Case No. 8:92CR12
Plaintiff,	)	
	)	
v.	)	MEMORANDUM AND ORDER
	)	
TRACY N. LOMAX, a/k/a	)	
AHAD HASAN,	)	
Defendant.	)	

As required by Rule 4(b) of the Federal Rules Governing Section 2255 Proceedings, I have conducted an initial review of the newly filed Motion to Vacate under § 2255 (filing no. [828](#)) and the supporting index of evidence (filing no. [829](#)). I conclude that the Motion is likely meritorious.

It is painfully clear to me that I violated Lomax’s right to due process and his lawyers were ineffective when we all failed to deal with the consecutive versus concurrent issue at the time Lomax was sentenced. The probation officer contributed mightily to this mistake by calling the issue “moot” in the PSR due to the life sentence that I was then required to impose. Still further, I doubt that this is a second or successive motion given that the issue could not have arisen until I granted the stipulated reduction in the defendant’s life sentence as a result of a retroactive amendment to the Guidelines. There is no doubt that this motion is timely.

I strongly urge the government to consider whether justice will be served by opposing this motion, especially given the defendant’s record in prison. For example, Lomax: “[c]ompleted drug education in 1998. [He also] [c]ompleted sundry education courses, most notably, electrical 1, vocational math, real estate, astronomy, calculus, trigonometry, algebra, business law, legal research, creative writing, excel, word perfect, and keyboarding” according to the most recent report from a United States Probation Officer. (Filing no. [803](#).)

Therefore, pursuant to Rule 5,

IT IS ORDERED that:

1. The government shall submit an answer, brief and any other documents required by Rule 5 of the Federal Rules Governing Section 2255 Proceedings no later than the close of business on Tuesday, February 16, 2016;
2. Mr. Lomax, through his counsel, may reply as authorized by Rule 5(d) no later than the close of business on Friday, February 26, 2016.
3. My chambers shall call this file to my attention once the government files an answer, brief and related materials.
4. In addition to giving notice to counsel, the Clerk shall mail a copy of this document to Mr. Lomax.

January 15, 2016.

BY THE COURT:

*s/ Richard G. Kopf*

Senior United States District Judge